

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 91-438-C - ORDER NO. 91-1134
DECEMBER 17, 1991

IN RE: Application of Business Choice)
 Network, Inc. for a Certificate of)
 Public Convenience and Necessity.) ORDER GRANTING
) CERTIFICATE AND
) REQUIRING REFUND

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of Business Choice Network, Inc. (BCN or the Company) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of telecommunications services in the State of South Carolina. BCN's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1990) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed BCN to publish a prepared Notice of Filing and Hearing in newspapers of general circulation in the affected areas one time. The purpose of the Notice of Filing and Hearing was to inform interested parties of BCN's Application and the manner and time in which to file the appropriate pleadings for participation in the proceeding. BCN complied with this instruction and provided the Commission with proof of publication of the Notice of Filing and Hearing. Petitions to Intervene were filed by Southern Bell Telephone &

Telegraph Company (Southern Bell) and the South Carolina Department of Consumer Affairs (the Consumer Advocate).

A hearing was commenced on Wednesday, November 13, 1991, at 11:00 a.m. in the Commission's Hearing Room. The Honorable Rudolph Mitchell presided. James Freeman, Esquire, represented BCN. Carl F. McIntosh, Esquire, represented the Consumer Advocate; Fred A. Walters, Esquire, represented Southern Bell; and Marsha A. Ward, General Counsel, represented the Commission Staff.

BCN presented the testimony of Brian C. Panuline in support of its application. Mr. Panuline explained BCN's request for certification to operate as a reseller of interexchange telecommunications services in South Carolina. Panuline explained that the Company wished to resell AT&T's Software Defined Network (SDN) and is exploring the resale of other service offerings. BCN subscribes to AT&T's service pursuant to the terms and conditions set forth in AT&T's tariffs. All facilities and services are provided by AT&T, but BCN will be responsible for billing, trouble reporting, and customer services. BCN contracts for billing and collection services with Digital Communications of America, Inc. Panuline outlined BCN's qualifications, background, and technical capabilities. Mr. Panuline explained that BCN contracts with independent sales people who market BCN's services in return for a commission. The senior management team of BCN has considerable experience in the areas of management, marketing, communications systems, customer service, finance and accounting.

Southern Bell presented the testimony of C. L. Addis. Addis

testified that Southern Bell opposes the resale of AT&T's Software Defined Network (SDN) services to South Carolina customers, though it does not oppose the granting of a reseller certificate, consistent with past Commission Orders.

Southern Bell should be compensated by BCN, when BCN functions as a reseller, for the unauthorized completion of any intraLATA calls over facilities other than those approved for resale, as ordered by the Commission in Docket No. 86-187-C, Order No. 86-793, issued August 5, 1986. However, Mr. Addis added that Southern Bell's position is that the Compensation Order should not be used as a grant of unlimited statewide authority. The incidental transmission of an occasional intraLATA call is different, in Southern Bell's opinion, from the "intentional unrestricted passage of all calls, regardless of their jurisdictional nature."

After full consideration of the applicable law and of the evidence presented by BCN, the Consumer Advocate, Southern Bell and the Commission Staff, the Commission hereby issues its findings of fact and conclusions of law.

FINDINGS OF FACT

1. BCN is incorporated under the laws of the State of South Virginia, and is headquartered in Chesapeake, Virginia.

2. BCN operates as a non-facilities based reseller of interexchange services, and wishes to do so on an interLATA basis in South Carolina.

3. BCN has the experience, capability, and financial resources to provide the services as described in its application.

4. Southern Bell and other local exchange carriers (LEC's) should be compensated for any unauthorized intraLATA calls completed through BCN's service arrangements.

5. BCN has completed some intrastate toll calls prior to certification in South Carolina.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a certificate of public convenience and necessity should be granted to BCN to provide intrastate, interLATA service through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Services, or any other services authorized for resale by tariffs of facility based carriers approved by the Commission.

2. That all intrastate intraLATA calls must be completed over intraLATA WATS, MTS, private and foreign exchange lines or any other service of facility based carriers which have been approved for resale on an intraLATA basis. Any intraLATA calls not completed in this manner would be considered unauthorized traffic and the Company will be required to compensate LEC's for any unauthorized intraLATA calls it carries pursuant to Commission Order No. 86-793 in Docket No. 86-187-C.

3. The Commission adopts a rate design for BCN for its resale services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate level

with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communication Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984). BCN shall file maximum rate tariffs within 30 days of the date of this Order which reflect, among other things, the appropriate Commission Regulation on customer deposits and that advance payments will be treated as customer deposits with any refund being made at the Commission approved interest rate.

4. BCN shall not adjust its rates below the approved maximum level without notice to the Commission and to the public. BCN shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of BCN's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1990).

5. BCN shall refund or credit to its customers any amount billed and collected for the completion of any South Carolina intrastate toll calls prior to this certification. Such refund or credit must be made with interest at the rate of 12% per annum. The Company shall certify to the Commission that appropriate refunds/credits were made within 30 days of completion of the refunds/credits. The information filed should be sufficient to

allow the Commission Staff to verify the refunds/credits.

6. BCN shall file its tariff and an accompanying price list to reflect the Commission's findings within thirty (30) days of the date of this Order.

7. BCN is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

8. With regard to BCN's resale of services, an end user should be able to access another interexchange carrier or operator service provider if they so desire.

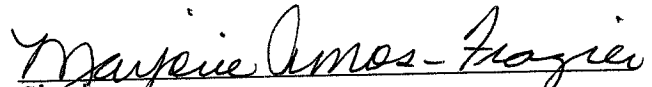
9. BCN shall resell the services of only those interexchange carriers or LEC's authorized to do business in South Carolina by this Commission. If BCN changes underlying carriers, it shall notify the Commission in writing.

10. BCN shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

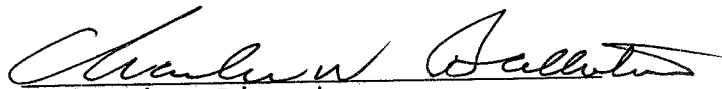
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11. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS

FOR INTEREXCHANGE COMPANIES AND AOS'S

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

*THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR
ENDING _____.

*THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT
PORTION PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT
AND EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR
ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE
INVESTMENT (SEE #3 ABOVE).